

GIPSON HOFFMAN & PANCIONE  
A Professional Corporation  
GREGORY A. FAYER (State Bar No. 232303)  
GFayer@ghplaw.com  
ELLIOT B. GIPSON (State Bar No. 234020)  
EGipson@ghplaw.com  
1901 Avenue of the Stars, Suite 1100  
Los Angeles, California 90067-6002  
Telephone: (310) 556-4660  
Facsimile: (310) 556-8945

Attorneys for Plaintiff  
CYBERSitter, LLC d/b/a Solid Oak Software

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

CYBERSitter, LLC, a California limited  
liability company, d/b/a Solid Oak Software,

Plaintiff,

v.

The People's Republic of China, a foreign  
state; Zhengzhou Jinhui Computer System  
Engineering Ltd., a Chinese corporation;  
Beijing Dazheng Human Language  
Technology Academy Ltd., a Chinese  
corporation; Sony Corporation, a Japanese  
corporation; Lenovo Group Limited, a  
Chinese corporation; Toshiba Corporation, a  
Japanese corporation; ACER Incorporated, a  
Taiwanese corporation; ASUSTeK  
Computer Inc., a Taiwanese corporation;  
BenQ Corporation, a Taiwanese  
corporation; Haier Group Corporation, a  
Chinese corporation; and DOES 1-10,  
inclusive,

Defendants.

CASE NO. CV10-0038 GAF (SHx)

**NOTICE OF *EX PARTE*  
APPLICATION AND *EX PARTE*  
APPLICATION FOR LETTERS  
ROGATORY TO EFFECT SERVICE  
OF PROCESS**

Judge: Hon. Gary A. Feess  
Ctm: 740

Hearing Date: None scheduled  
Hearing Time: None scheduled

Discovery Cutoff: None set  
Pretrial Conference: None set  
Trial Date: None set

[Filed concurrently with: Memorandum  
of Points and Authorities; Declaration of  
Gregory A. Fayer; Letters Rogatory;  
[Proposed] Order]

NOTICE OF *EX PARTE* APPLICATION FOR LETTERS ROGATORY  
TO EFFECT SERVICE OF PROCESS

**TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that plaintiff CYBERSitter, LLC d/b/a Solid Oak Software ("Plaintiff") will and hereby does apply *ex parte*, in accordance with Rule 7-19 of the Central District Local Rules, to the Honorable Gary A. Feess, in courtroom 740 of the United States District Court for the Central District of California, located at 255 East Temple Street, Los Angeles, California 90012, requesting the issuance of Letters Rogatory to effect service of process in this action upon defendants ACER Incorporated, ASUSTeK Computer Inc. and BenQ Corporation (collectively, "Taiwanese Defendants").

There is good cause for granting this *ex parte* application. Defendants ACER Incorporated, ASUSTeK Computer Inc. and BenQ Corporation are Taiwanese corporations. Taiwan is not a signatory to the Hague Service Convention. Accordingly, service of process by means of the Hague Convention is not possible for the Taiwanese Defendants.

The Taiwanese Defendants have either declined or failed to respond to Plaintiff's requests to arrange for voluntary service. On January 14, 2010, counsel for Plaintiff sent letters to the each of the Taiwanese Defendants (and to two of their U.S. affiliates) requesting arrangement for voluntary service of process. *See* Declaration of Gregory A. Fayer ("Fayer Decl."), ¶ 2, Exhibits A-E. On January 20, 2010, Plaintiff received an email from in-house counsel at BenQ's U.S. affiliate attaching a letter (dated January 18, 2010), stating that it would not accept service on behalf of BenQ Corporation. *Id.* ¶ 8, Exhibit F. As of this date, none of the other Taiwanese Defendants or their affiliates has responded to Plaintiff's request. *Id.* ¶ 9.

The process for service by means of Letters Rogatory in Taiwan often takes four to six months or longer to complete. Accordingly, in order avoid undue delay and to facilitate a timely resolution of this dispute, Plaintiff respectfully requests that the Court issue Letters Rogatory requesting the Taiwan Taipei District Court to order

1 service of process on the Taiwanese Defendants by a method recognized and  
2 prescribed under Taiwanese law.

3 Plaintiff's counsel made a good faith effort to give notice to the Taiwanese  
4 Defendants of the substance and timing of this application in accordance with Local  
5 Rule 7-19.1. On the afternoon of Wednesday, January 20, 2010, Plaintiff's counsel  
6 sent letters by email, facsimile or both (and also by first class mail) to the each of the  
7 Taiwanese Defendants and to two of their U.S. affiliates, notifying them of Plaintiff's  
8 intent to bring this *ex parte* application on Friday, January 22, 2010, and requesting  
9 that they inform Plaintiff's counsel whether or not they intend to oppose the  
10 application. Fayer Decl. ¶ 13, Exhibits G-K. Since none of the Taiwanese  
11 Defendants has yet been served, none has counsel of record to which to give notice.  
12 *Id.* ¶ 13. Accordingly, Plaintiff's counsel contacted them in the most expedient  
13 manner reasonably available. *Id.* None of the Taiwanese Defendants responded to the  
14 notice letter (except for a reference to the notice letter in the above-referenced email  
15 from in-house counsel at BenQ's U.S. affiliate). *Id.* ¶ 13, Exhibit F. It is thus unclear  
16 whether the Taiwanese Defendants oppose the application, and, if so, what the basis of  
17 their opposition might be. *Id.* ¶ 13.

18 In addition, it is in the interest of justice to allow this *ex parte* application to be  
19 heard without notice, pursuant to Local Rule 7-19.2, with respect to the defendants  
20 other than the Taiwanese Defendants. The interest of justice is clearly served by  
21 expeditiously arranging for service of the Taiwanese Defendants in this action. All of  
22 the non-Taiwanese defendants are Japanese or Chinese entities. None has yet been  
23 served and none has counsel of record. *Id.* ¶ 19. Furthermore, none will be  
24 prejudiced by the issuance of Letters Rogatory to assist in the service of process of the  
25 Taiwanese Defendants. Indeed, it is doubtful that any of the non-Taiwanese  
26 defendants could show standing to challenge the issuance of Letters Rogatory for  
27 service of process on the Taiwanese Defendants. Absent counsel of record to contact  
28

1 for notice purposes, it would be both costly and futile to attempt to contact these  
2 overseas defendants regarding the instant *ex parte* application. *See id.*

3 This *ex parte* application is based on this Notice; the accompanying  
4 Memorandum of Points and Authorities; the accompanying Declaration of Gregory A.  
5 Fayer; the accompanying Letters Rogatory for the Court's signature; the pleadings and  
6 papers on file in this action; and on such other evidence as may be submitted to the  
7 Court and such oral argument and other matters as the Court may consider. A  
8 proposed order accompanies this application.  
9

10 DATED: January 22, 2010

GIPSON HOFFMAN & PANCIONE  
A Professional Corporation  
GREGORY A. FAYER  
ELLIOT B. GIPSON

11 By /s/ Gregory A. Fayer  
12 GREGORY A. FAYER  
13 Attorneys for Plaintiff CYBERsitter, LLC  
14 d/b/a Solid Oak Software  
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